MARIAM BINTI MANSOR v. J.D. PETER

[O.C.J. (Abdul Hamid J.) January 3, 1975]
[Kuala Lumpur — Civil Suit No. 1209/1973]

Damages — Personal injuries — Laceration — Skin grafting — Scars — Keloid formation — Functional disabilities — Psychiatric problem — Personality impairment — Plastic surgery — General damages — Assessment — Factors.

The plaintiff a secondary school student sued for damages for personal injuries suffered in a motor accident. The injuries she suffered were:

"(a) 10" long ragged laceration over the antereo-lateral aspect of the right forearm extending from the antecubital fossa downwards. The flexor muscles and the radial component of the extensor muscles were exposed and lacerated;

(b) 3 ragged lacerations measuring about 1" diameter each over the medial aspect of the right thigh. These lacerations were deep and exposed the underlying muscles; and

(c) A small superficial laceration on the inner aspect of the left labia minora of her external genitalia.

Emergency surgery of excision of wound of the right forearm, debridement and closure of the anterior defect by primary split skin graft was performed on 19th October, 1971. Toilet and suture was done for the right thigh. On 1st December, 1971, excision of slough over the lateral aspect of the right forearm and skin grafting were performed."

She was hospitalised for 54 days.

During her convalescence, she developed psychiatric problems on 29th October, 1971 and she was treated by the Senior Consultant Psychiatrist at the General Hospital. On 10th August, 1974 she developed another episode of psychiatric disturbances and was admitted to the General Hospital, Kuantan and Kuala Lumpur. On 22nd September, 1974 she was discharged from General Hospital, Kuala Lumpur.

Held: (1) in assessing damages it was important that the court directs its mind to the following factors:—

(a) Pain and suffering and loss of amenities

(b) Psychiatric problems

(c) Plastic surgery;

(2) in considering what compensation the court should award, it was impossible to arrive at an accurate figure, however, all the court could do was to award her a sum which would compensate her for pain and suffering she had undergone and would, in all probability, continue to undergo. The sum awarded should be a fair sum to compensate the plaintiff for the injuries suffered but it should not be too excessive to constitute an injustice to the defendant;

(3) taking into consideration the pain and suffering and loss of amenities, the impairment of personality and the cost of plastic surgery, the court would assess general damages at $38,000 and special damages at $2,000.

Cases referred to:-

(1) *Chai Koi Fah & Ors.* v. *Lai Choy Keng & Anor.* [1967] 1 M.L.J. xl.

(2) *Saniah & Ors.* v. *Abdul Hamid & Ors.* [1967] 2 M.L.J. 255.

(3) *Murphy* v. *Finch* [1964] C.A. No. 80 reported in *Kemp* v. *Kemp* 3ed. p. 244.

(4) *Symes* v. *Ling Ngan Ngieng* [1966] 2 M.L.J. 149.

(5) *Rajaletchumi & Anor.* v. *Angela Soh Oon Kay* [1971] 1 M.L.J. 129.

CIVIL SUIT.

Au Ah Wah for the plaintiff.

Khoo Eng Chin for the defendant.

Abdul Hamid J.: The plaintiff is seeking for judgment to be entered against the defendant; for special damages in the sum of $3,490.75; and for damages and costs.

Liability is not denied and a sum of $2,000 is agreed as special damages. The only remaining question for the court to decide is the quantum of general damages.

On October 19, 1971, the date of the accident, the plaintiff was a secondary school student at The Convent of the Infant Jesus, Bukit Nanas, Kuala Lumpur. She was walking along the pavement of Jalan Hishamuddin, Kuala Lumpur in the direction of the Post Office when the defendant driving motor-car No. BE.5245 coming from the direction of the railway station mounted the pavement and knocked violently into the plaintiff from behind causing serious injuries.

At the hearing, Encik Mansor bin Mohamed Noor, the plaintiff's father testified that after the accident, the plaintiff was admitted to the General Hospital bleeding all through. Dr. Khaw Joo Hua, a Consultant Othorpaedic Surgeon, stated in his report that the plaintiff suffered the following injuries:—

"(a) 10" long ragged laceration over the antero-lateral aspect of the right forearm extending from the antecubital fossa downwards. The flexor muscles and the radial component of the extensor muscles were exposed and lacerated. There were numerous pieces of dirt and paint chips in the wound;

(b) 3 ragged lacerations measuring about 1" diameter each over the medial aspect of the right thigh. These lacerations were deep and exposed the underlying muscles; and

(c) A small superficial laceration on the inner aspect of the left labia minora of her external genitalia.

Emergency surgery of excision of wound of the right forearm, debridement and closure of the anterior defect by primary split skin graft was performed on 19th October, 1971. Toilet and suture was done for the right thigh. On 1st December, 1971, excision of slough over the lateral aspect of the right forearm and skin grafting were performed."

The plaintiff was discharged from the hospital on December 11, 1971 after spending approximately 54 days in the hospital. Dr. Khaw also examined the plaintiff on September 30, 1974 and gave the following findings:—

"The whole of the upper ⅓ of the right forearm and elbow is occupied by an area covered with grafted skin and scars. Over the lower part it covers the whole circumference of the forearm for a distance of 3". In the upper part, there are two extensions measuring 8" long by 2" wide over the ventral and dorsal aspects. Sensation to pin prick is absent on the areas with grafted skin.

This scarred area is very unsightly with concave defect over the ventral and radial aspects of the forearm representing the area of loss of subcutaneous tissue and muscles. The circumference of the right forearm measured 7" and 5¾" at 4" and 6" respectively below the olecranon compared to 7¾" and 6¾" at the same respective distances from the olecranon on the left side. There is thus a diminution of between ¾" to 1" in the circumference of the right forearm.

Movements of the right elbow, wrist and fingers are full range and comparable to the left side. She also has full muscle power in the muscles controlling the right elbow and wrist. However, the grip of her right hand is slightly diminished — 4+ compared to power 5 in the left hand. Sensation of the right hand is not impaired.

The 3 lacerations of the right thigh have healed with considerable keloid formation.

The anterior aspect of the left thigh was the donor area for skin used in the skin grafting operation. There is an area of 6½" x 5"W where the skin is a little less pigmented. In addition, there are 2 areas of keloid formation measuring 3" length x 1½" width and 1" length x 1" width respectively over the medial aspect of the thigh.

X-rays of the right forearm bones do not show any bony lesions."

Dr. Khaw expressed the opinion that

"the lacerations over the right thigh have healed with considerable keloid formation. The small laceration of the left labia minora has also healed. The extensive degloving laceration of the right forearm involved initial loss of skin, subcutaneous tissue and muscles. The dead and devitalised tissues were removed at primary operation and the skin defect made good by skin graft. Subsequently, another operation was needed to remove more devitalised and sloughing skin and further skin grafting performed. It should therefore be regarded that this patient had suffered almost complete skin loss over a segment of her right forearm measuring 8" long x 2" wide over 2 areas and a whole circumferential area of 3" long. At present, this area is healed up and the area covered by grafted skin but there is a concave defect especially over the radial and ventral aspects representing the area of loss of subcutaneous tissue and muscles. In terms of actual measurements, the circumference of the forearm is lessened by ¼" x 1". From the functional point of view, this patient has remarkably good movements and muscle power of the elbow and wrist. However, there is definite weakness of the grip of the right hand (power 4+). There is also loss of sensation over the skin grafted areas."

In his report Dr. Khaw also dealt with the following:—

(a) *Unsightly scars:*

"The left thigh served as donor area for skin used in the grafting operations. She has also developed rather unsightly scars especially over the medial side of the thigh.

The functional disabilities with regard to sensation and weakness of grip are expected to remain permanent."

The plaintiff's main complaint is the unsightly appearance of her right forearm and the thighs. These scars may be seen from the photographs (Exhibit P3). I also had a look at the scars on the right forearm. The plaintiff is a pretty girl and I could well understand her profound embarrassment.

(b) *Psychiatric problems:*

"During her convalescence, she developed psychiatric problems on 29th October, 1971 and she was treated by Dr. Syed Haq, the Senior Consultant Psychiatrist at the General Hospital. On 10th August, 1974 she developed another episode of psychiatric disturbances and was admitted to the General Hospital, Kuantan and Kuala Lumpur. On 22nd September, 1974 she was discharged from General Hospital, Kuala Lumpur."

In assessing damages I am of the view it is important that I direct my mind to the following factors: —

(a) Pain and suffering and loss of amenities:

Under this head I shall take into consideration the nature of the injuries sustained, the period plaintiff was hospitalised, the subsequent hospitalisation and the operations that were carried out in the preliminary skin grafting. The court will also consider matters such as reduced prospects of marriage and the plaintiff's embarrassment. The court will further consider her activities in school prior to the accident and the change of personality after the accident.

(b) Psychiatric problems; and

(c) Plastic surgery.

In assessing damages in the present case, I have drawn my attention to the cases which both Mr. Au Ah Wah and Mr. Khoo Eng Chin cited to me in their submissions.

In *Chai Koi Fah & Ors.* v. *Lai Choy Keng & Another*,[1] the plaintiff, a good-looking 26 year old nurse sustained a number of lacerations on her left ear, hand, palm, upper arm, leg and thigh. As a result of the injuries, she was hospitalised for 16 days. She was later treated by a plastic surgeon with the object of removing keloid formations on her resulting from the healing of the lacerated wounds on her upper arm and thigh. The surgeon made a trial incision of one of the keloids on the right upper arm and decided against interfering any further. He recommended that the operation should be done in Japan where the necessary skill, instruments and drugs were available. After taking all circumstances into consideration, the court awarded general damages in the sum of $10,000.

Although in the present case the injuries are fewer in number, they are, however, more serious. In the present case the plaintiff was hospitalised for 54 days. The unsightly scars found on both her thighs and the ugly scars on the right forearm seem to bear testimony as to the seriousness of the injuries. According to Dr. Khaw's report, the injury on the antero-lateral aspect of the right forearm exposed the flexor muscles and the radial component of the extensor muscles. The lacerations on the medial aspect of the right thigh were deep and exposed the underlying muscles.

While in hospital an emergency surgery of excision of wound and a further surgery of slough of skin grafting of the right forearm were performed. Dr. Khaw in his oral testimony stated that to improve the plaintiff's appearance, further surgical operations shall have to be done and have to be carried out in stages. I take this into account in considering pain and suffering. It is also relevant to consider the fact that plaintiff had a further relapse in August 1974 as a result of which she was hospitalised for another 42 days at Kuantan and later at the General Hospital, Kuala Lumpur.

Under the head of loss of amenities, I shall have to bear in mind that the ugly scars and indeed the unsightly appearance will probably be a source of embarrassment to the plaintiff throughout her life, and, furthermore, as a young, pretty and unmarried girl, her prospects of marriage will certainly be reduced. In considering the reduced prospects of marriage, the court must also direct its mind to the fact of the impairment of personality which in itself is a relevant factor in this regard.

Dr. Khaw expressed the view that time will soften the scars a little but they cannot be expected to improve the cosmetic appearance. He was furthe rof the view, and with which I share, that as a young lady, these cosmetic blemishes can be considered to be a severe handicap. Dr. Khaw felt that plastic and reconstructive surgery can improve the appearance but some scars will remain and she can never be expected to look as good as she did before the accident.

Now, in *Saniah & Ors.* v. *Abdul Hamid & Ors.*,[2] MacIntyre J. (as he then was) awarded a sum of $20,000 to a Junior Agricultural Assistant, a 19 year old girl. The learned judge took into account in awarding this sum not only the severe injuries suffered by her but also the reduced prospects of marriage. I would, however, hasten to add that this was in 1967 and it is common knowledge that the value of money has fallen very much since.

Although the injuries suffered by the plaintiff in *Saniah's* case, *supra*, appear to be more serious than those suffered by the plaintiff in the present case, it is, however, evident from the medical report that the plaintiff suffered from severe shock resulting in what Dr. Haq described as acute confusional state. He also described her, after the second episode of psychiatric disorder, as having suffered from an acute episode of Schizuphreniform illness, a factor which I shall shortly deal with in greater detail.

It is pertinent to note that the accident happened only two weeks before her Malaysian Certificate of Education Examination. She missed the examination and only rejoined school in January 1972. She sat for the M.C.E. Examination in that year and got through with only Grade III. It is perhaps a matter of speculation whether she could have obtained better grade if she had not suffered the injuries. In the absence of her previous performance in school, I do not think the court can properly come to any definite conclusion. In view of her mental impairment, however, it is not improbable that her ability to concentrate had somewhat been affected.

Encik Mansor testified that the plaintiff was a very active girl before the accident. The principal of the Convent School gave a report to the effect that the plaintiff was socially well-adjusted, very pleasant, eager to learn and participated very satisfactorily in a number of school activities including the Police Cadet Unit in which she was made a Corporal in 1971. On the contrary, when she rejoined school in 1972, she was unable to participate in games and other school extra-curricular activities. She also sought permission to wear long sleeves to conceal some of her injuries.

For her activities in the Police Cadet Unit, the plaintiff was commended by Ketua Pegawai Polis, Selangor. It is evident from the newspaper cutting produced as exhibit that she received wide publicity when she was promoted Corporal.

Encik Mansor also testified that after the fourth day in the hospital following the admission, the plaintiff lost her mind and began to tear bandages. She yelled, cried and even urinated in bed. She was violent and delirious. She even kicked her mother and slapped him and the grandmother. She was tied to the bed and could not take her food and she could not even recognize people. Encik Mansor also stated that the plaintiff had a relapse when she was doing Business Administration at MARA. She became violent and suffered from loss of memory. She argued with her lecturers, yelled, sang and ran away from school. He took her back to Kuantan and there she again became violent, yelled, sang and punched people and even called her mother "bastard." She even undressed and wanted to jump out of the window. It was then that he took her to the General Hospital, Kuantan and later transferred her to the General Hospital, Kuala Lumpur.

Dr. Haq the Senior Consultant Psychiatrist holding Diploma in Psychological Medicine, England; Fellow of the Royal College of Psychiatrists, London; Member of the College of Psychiatrists Australasia/New Zealand and Member of the Academy of Medicine, stated that

"while under surgical care ten days after admission, she developed psychiatric complications. Inability to sleep, fluctuations in level of consciousness, muttering to herself and scolding her mother for no apparent reason. At this stage she was provisionally diagnosed as suffering from post traumatic psychosis. On 2.11.71 I examined her and found her to be confused ,disorientated to time, place and person and agitated. Her talk was incoherent with periods of lucid interval. With treatment she made a good recovery and was discharged on 11.12.71."

On August 26, 1974 Dr. Haq saw the plaintiff again when she was referred by Dr. Wong Chong Wah, Consultant Physician, General Hospital, Kuantan with a history that since August 10, 1974 she was acutely disturbed mentally —

"She used to scream, shout, talk nonsense and accuse people of persecuting her. She refused to eat or drink. Despite medical treatment she continued to remain the same and was therefore transferred to this hospital for further management of the psychotic state."

Dr. Haq expressed the view that

"on admission she was observed to be agitated, shouting, screaming and talking disconnectedly. Her voice was hoarse due to constant talking and occasional shouting. She was somewhat dehydrated due to insufficient intake of fluids. Recall and retentivity was impaired and so was her orientation. With medication the acute state subsided and she was able to communicate and narrate the abnormal experiences — hallucinatory and delusional. She was discharged on 22.9.74 and is now under periodic out-patient therapy. She was diagnosed as suffering from an acute episode of schizophreniform illness."

He further added that the plaintiff as far as he can gather

"was physically healthy and mentally alert adjusting well to the environment at home and her school. She had coped satisfactorily with her studies and was due to take secondary school government examination. Following her admission to hospital on 19.10.71 she had to be subjected to surgical treatment during the course of which she developed an acute confusional state. The obvious physical disabilities and the anxiety over the doubts as to her fitness to take the examination to a large extent precipitated this psychotic episode. However, she made a satisfactory recovery although left with a disfigured right upper limb and a scarred personality."

As for the second episode of psychiatric disorder, Dr. Haq attributed this to the precipitation by protracted conflicts over interpersonal relationship with fellow students in the hostel while she was a student at MARA Institute. Dr. Haq also stated that

"the disfigurement was a constant handicap to her socially resulting in alienation and inadequacy to cope with her problems. During this phase she became emotionally disturbed to the extent of harbouring ideas of persecution, self-depreciation and delusions incorporating the beliefs associated with her culture. With almost two months of hospitalisation she recovered and continues with treatment as an out-patient, but had to lay off her studies on medical advice."

In conclusion Dr. Haq stated that in his opinion —

"the traumatic experience of the motor vehicle accident and the residual physical disfigurement despite reconstructive surgery has subjected this teenaged girl to a constant conflict in mind resulting in an inadequate personality. She had difficulty in social adjustment outside her home environment, and such dependence has interrupted her progress in studies. The possibility of a similar psychotic episode cannot be ruled out if she is subjected again to protracted stress and strain without emotional support."

In his oral testimony Dr. Haq said that the accident attributed to her psychotic state. The plaintiff is now unable to cope because of the disfigurement. He, however, expressed the view that the form of illness referred to in his report does not affect the total personality to the extent of causing dementia. Nonetheless, if she is subjected to further strain it is likely to recur. He is of the opinion that if, to some extent,

the disfigurement could be corrected, she might be able to adjust herself. He is further of the opinion that she has to be under treatment from time to time as an out-patient with some medication supported by physiotherapy. In that event the probability of readjustment would seem to depend on how successful is the operation to correct the disfigurement.

Dr. Haq agreed with Mr. Khoo Eng Chin when cross-examined that her mental state seems to be substantially due to scars and it will improve with plastic surgery and psysiotherapy.

In answer to question by the court Dr. Haq explained that what might have led to her complications was the fact that in the plaintiff's case, she did not lose consciousness after the accident which was a terrifying experience.

I have not seen any judgment in which a question such as this has been considered and neither have I been able to find any English decision directly on the point and nor has counsel for the plaintiff referred me to any decision relevant on this point. However, in *Murphy* v. *Finch*,[3] the question of personality changes was considered. In that case the plaintiff suffered a laceration of the scalp, which left a small blemish, a fracture of the right clavicle, a laceration of the left hand and laceration of both ankles. She also suffered from concussion and ultimately contusion of the brain.

She also suffered, up to the date of the trial, from considerable personality impairment and impairment of memory. She was depressed, suffered frequently from headache and found difficulty in sleeping. At the time of the accident she was a staff nurse. The medical report stated that her personality changes should rapidly improve over the subsequent period after disposal of twelve months so that at the end of such time she would be left with some impairment of memory and some personality change. The report further stated that the probable persistent disability that she would have in the form of some temperamental change that would last for an indefinite period and due to the physical effect of the accident on the brain would not be more than 15%.

That case may in many respects be distinguished from the present case. However, the point I am trying to stress is that the personality impairment is an important consideration in deciding damages to be awarded.

In that case on appeal, Diplock and Willmer L.JJ. stated that they considered the total award of £4,000 to be about the right figure. Out of the £4,000, approximately £2,000 were accounted for the change of personality suffering, the past and future. Although the present case may be distinguished from that case, I do not think the court can view the plaintiff's suffering less seriously judging from the medical evidence. A sum of $13,000 would not, I think, be excessive. The court shall have to bear in mind that no sum of money could really be said to be adequate to repay the plaintiff to completely restore her former personality and physical makeup.

Finally, I shall consider this question of plastic surgery. It is evident that the plaintiff suffered profound embarrassment and will probably continue to suffer until something is done to improve the appearance. Encik Mansor said that she has to wear long sleeves because of the scars. Dr. Khaw expressed the view that surgery will be required and this has to be done in stages. There will be scars but lesser ones. Her sensation will improve but will never be normal. Dr. Khaw also expressed the view that surgery can be done here but felt that it would be better if it is done by an experienced surgeon overseas, e.g. in England or Japan for better results and apart from that, there are proper centres like the one in East Greenstead a hospital for plastic surgery only, equipped with proper facilities. The cost, however, will be very high. He estimated that it would be in the region of $40,000. Dr. Khaw did not, however, rule out the possibility of a successful operation locally.

Mr. Khoo Eng Chin cited to me the case of *Symes* v. *Ling Ngan Ngieng*[4] where a young girl sustained injuries that resulted in facial disfigurement. Gill J. (as he then was) awarded $10,000 general damages, $5,000 of which was the estimated cost of plastic surgery.

In the present case there is no evidence to show how much it would cost to have plastic surgery locally. In this regard it may be pertinent to refer to *Rajaletchumi & Anor.* v. *Angela Soh Oon Kay*[5] where a young girl injured in an accident suffered injuries on her face which left scars for which plastic surgery was done in New York costing $10,000. On appeal the Federal Court found the award excessive and reduced it to $5.000. The court took the view that the injuries suffered by the plaintiff in that case were comparatively minor compared to the injuries suffered by the plaintiff in *Symes'* case, *supra*. The injuries suffered by the plaintiff in the present case are not facial injuries, however, they are serious and require surgery in stages over a period of time and even then, according to Dr. Khaw, there will still be scars. The only fortunate part of this case is that the scars, although very ugly, could be hidden. The scars on the forearm cannot be seen if she uses long sleeves and those on both thighs if she wears sarung which, I presume, she would normally do. Nonetheless, it is the expert's view that the operations would be required to improve the appearance and I have no doubt, considering the value of money today, the cost of surgery, even if done locally, will not be less than $10,000.

In considering what compensation the court shall award, it is impossible to arrive at an accurate figure, however, all the court can do is to award her a sum which would compensate her for pain and suffering she has undergone and will, in all probability, continue to undergo. I feel that the sum awarded should be a fair sum to compensate the plaintiff for the injuries suffered, but it should not be too excessive to constitute an injustice to the defendant.

Taking into consideration the pain and suffering and the loss of amenities, the impairment of personality and the cost of plastic surgery, I would assess general damages at $38,000.

I therefore award the plaintiff a sum of $2,000 special damages, $38,000 general damages with interest at 6% per annum with effect from November 16, 1973 the date this suit was filed, and costs.

Order accordingly.

Solicitors: *Au Ah Wah & Co.; Khoo & Sidhu.*